

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

CIVIL REVISION NO. 6469 OF 2023

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

AND

In the matter of:

Sk. Ferdaus Ahmed

.... Petitioner

-Versus-

The Manager, Sonali Bank Ltd Daulatpur College Road
Branch Daulatpur, Khulna and others

....Opposite-parties

Mr. M.M. Shafiullah, Advocate

... For the petitioner

Mr. Md. Raju Mia, Advocate

....For the opposite party no. 1

Heard and Judgment on 10.07.2024

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J:

At the instance of the plaintiff in Money Suit No. 03 of 2023, this rule was issued calling upon the opposite-party no. 1 to show cause as to why the order no. 15 dated 16.10.2023 passed by the learned Joint District Judge, 1st court, Khulna in Money Suit No. 03 of 2023 allowing an application filed by the defendant No. 5 for exonerating him from

complying with the order dated 31.05.2023 and rejecting the application dated 31.05.2023 filed by the petitioner which was allowed by the same court vide order dated 31.05.2023 should not be set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

At the time of issuance of the rule, this court also stayed the operation of the impugned order dated 16.10.2023 for a period of 06(six) months which was subsequently extended from time to time and it was lastly extended on 28.04.2024 for another 06(six) months.

The short facts leading to issuance of the instant rule are:

The present petitioner as plaintiff filed the aforesaid Money Suit against the present opposite party claiming an amount of taka 9,04,24,170/- In the plaint it has been chiefly stated that, to secure the repayment of the loan so taken by the present plaintiff from the defendant, the plaintiff who is the borrower of the defendant pledged raw jute as well as other landed properties including certain Fixed Deposit Receipts (briefly FDR) as security to repay the loan. Since the pledged raw jute had not been stored orderly the weight of the raw jutes plummeted and the defendant- bank sold out the said raw jute in a shockingly low price incurring heavy losses to the plaintiff and claiming the losses, the plaintiff thus filed the Money Suit against the defendant. On the very date of filing the suit, the plaintiff also filed an application for injunction restraining the defendant from foreclosing the mortgaged property of the plaintiff which was mentioned in schedule-“B” and that of restraining the defendant from encashing the FDRs which has been scheduled as schedule-‘A’ to the plaint. Initially

upon hearing the plaintiff, the learned judge vide order dated 18.01.2023 issued a show cause notice only upon defendant no. 1 asking it to explain within a period of 20 days as to why an order of injunction will not be granted. Since no ad-interim order was passed the plaintiff then on 30.03.2023 (off day) filed another application under section 151 of the Code of Civil Procedure praying for ad-interim injunction only against the defendant no. 5 restraining it to sell the mortgaged property which has been mentioned in schedule-‘B’ as well as encash the FDRs which has been mentioned in schedule-‘A’ to the application. Basing on that application, the learned judge then passed an order restraining the defendant no. 5 from selling ‘B’ scheduled property till 28.05.2023 but no order was passed on encashing the FDRs. Since it came to the notice of the learned judge of the trial court basing on the application of the plaintiff dated 31.05.2023 that the FDRs were encashed on 29.04.2023 by the defendant no. 5 (before filing of Artha Rin Suit No. 75 of 2023) in spite of having an interim order the court then directed the defendant no. 5 to explain on appearing personally as to why legal action will not be taken directing it further to revert back the FDRs in its previous position fixing it on 13.07.2023. On 13.07.2023 the defendant no. 5 came up with an application stating inter alia that, since there had been no interim order on encashing the FDRs for that obvious reason it (defendant no. 5) encashed the FDRs and then filed Artha Rin Suit being Artha Rin Suit No. 75 of 2023 though ultimately begged apology for its inadvertent mistake. The defendant no. 1-5 on 23.08.2023 also filed another application under section 151 of the Code of Civil Procedure to exonerate the defendant no. 5 from complying with the

order no. 8 passed on 31.05.2023 and to render unconditional apology to them. Against those two applications dated 13.07.2023 and 23.08.2023, the plaintiff filed written objections. All those applications and written objections were ultimately taken up for hearing by the learned judge and vide dated 16.10.2023 passed the impugned order finding that since there has been remedy for the plaintiff to file a violation Miscellaneous Case under Order 39 Rule 2(3) of the Code of Civil Procedure for violating order of injunction so the plaintiff can take resort to that very provision. Insofar as regards to encashment of the FDRs which was encash on 29.04.2023 the learned judge vented a caution to the defendant no. 5 asking it to refrain from taking any step in future that undermine the honour and dignity of the court and then rejected the prayer of the plaintiff filed dated 31.05.2023 to restore the FDRs to its original position. On the application filed by the plaintiff under Order 8 Rule 1 of the Code of Civil Procedure dated 28.05.2023 for not to accept the written statement of the defendant nos. 1-5 also dated 28.05.2023 the learned judge came to a finding that, since the defendant upon receiving the summons filed written statement on 28.05.2023 on being granted time by the court dated 02.03.2023, so there has been no reason not to accept their written statement and accordingly the application of the plaintiff was rejected.

It is at that stage the plaintiff as petitioner came before this court and obtained the instant rule and order of stay.

Mr. M.M. Shafiullah, the learned counsel appearing for the petitioner submits that, the impugned judgment can not sustain so far as regards to exonerating the defendant opposite party no. 5 in complying with the

direction to covert the FDRs to its original position as the court became functus officio in passing such order (through impugned order) as it vide order dated 31.05.2023 had directed the said opposite party to convert the FDRs and informed compliance of such direction to the court and prays for making the rule absolute.

In contrast, Mr. Md. Raju Mia, the learned counsel appearing for the opposite party no. 1 by supporting the impugned order at the very outset submits that, all the applications so filed by the plaintiff has rightly been rejected as the learned judge has found no illegality in the orders favoring the defendant in respect of taking step in selling the 'B' scheduled property as well as encash the FDRs which has been scheduled 'A' to the plaint as on the first day of issuing show cause notice dated 18.01.2023 there had been no order restraining the defendants for encashing the FDRs for which they went on to file Artha Rin Suit being No. 75 of 2023 upon incasing those FDRs under the provision of section 12(3) of the Artha Rin Adalat Ain, 2003. Insofar as regards to converting the FDRs to its earlier position the learned judge became convinced with the explanation so have been offered by the defendants in their application dated 13.07.2023, and the learned judge has rightly passed the order rejecting the application of the plaintiff for converging the FDRs to its earlier position.

To refute the submission of the learned counsel for the petitioner Mr. Mia goes on to contend that, the court on its own volition by order dated 31.05.2023 directed the opposite party no. 5 to convert the FDRs not on the basis of any application by the plaintiff having no scope to find the court to become functus officio.

Be that as it may, we have considered the said submission so placed by the learned counsel for the petitioner and that of the opposite party and perused the impugned judgment and order, other documents, and order sheet so annexed with the revisional application. There has been no gainsaying the fact, that initially no order was passed on 18.01.2023 restraining the defendants from encashing the FDRs for which the bank went on for encashing those FDRs and upon adjusting the amount with the loan taken by the plaintiff, the Artha Rin Suit No. 75 of 2023 was filed. However, since there has been a show cause on encashing FDRs, the learned judge has thus rightly gave a caution upon the defendant vide impugned order which is justified having no scope for the plaintiff to feel aggrieved with that. Furthermore, once an FDR is encashed and the same is adjusted against the loan, there has been no scope to convert the same to its original position and the learned judge has rightly found so in the impugned order which is also liable to be sustained. Insofar as regards to the application for not accepting the written statement and to fix the matter for ex parte hearing, the learned judge has also very perfectly passed the order finding that on the second occasion following appearing in the suit by the defendants they filed the written statement.

All in all, we don't find any impropriety or illegality in the impugned order which is thus liable to be sustained.

Accordingly, the rule is discharged however without any order as to costs.

The order of stay grated at the time of issuance of the rule stands recalled and vacated.

The learned judge of the trial court is hereby directed to dispose of the suit as expeditiously as possible preferably within a period of 06(six) months from the date of receipt of the copy of this order.

Let a copy of this order be communicated to the court concerned forthwith.

Md. Bashir Ullah, J:

I agree.